

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

VERMONT ATTORNEY GENERAL'S OFFICE

Re: Proposed Vermont Age-Appropriate Design Code Rules for

Sections 2449f of Act 63

October 2, 2026

The Electronic Privacy Information Center (EPIC) submits these comments in response to the Vermont Attorney General's Office's ("AGO") proposed Prohibited Data and Design Protection Rule ("Proposed Rule") for the Vermont Age-Appropriate Design Code ("AADC"), to be codified in Section 2449f.¹

EPIC is an independent, nonpartisan public interest research center in Washington, D.C., established in 1994 to protect privacy, freedom of expression, and democratic values in the information age. For decades, EPIC has worked under different administrations to safeguard individuals' personal data and to protect consumer privacy. Recently, EPIC has been a leading voice on platform governance issues, advocating for meaningful regulation and oversight of platform companies that respects the privacy, speech rights, and associational rights of platform users.

The Vermont AADC relies on effective and sustained Attorney General rulemaking for its efficacy. EPIC is grateful to the Attorney General for proposing such a detailed and

¹ Vermont Attorney General's Office, *Age Vermont Age-Appropriate Design Code Rulemaking* (July 8, 2026), <https://ago.vermont.gov/vermont-age-appropriate-design-code-rulemaking>.

thoughtful set of rules, and is glad to see the AGO recognize some of the most harmful design practices as worthy of prohibition. However, EPIC believes that a number of changes are still necessary. Most importantly, EPIC recommends that the AGO simplify the Proposed Rule to avoid statutory conflicts and unintended results, especially by removing some of the provisions not focused on prohibited practices. EPIC also offers a number of suggestions to more clearly define the prohibited practices identified in the Proposed Rule, which EPIC believes will help promote compliance and prevent litigation.

I. The AGO should simplify the Proposed Rule and focus its scope on prohibited practices to avoid statutory conflicts.

Section 2449f of the AADC directs the Attorney General to adopt rules “prohibit[ing] data processing or design practices of a covered business that, in the opinion of the Attorney General, lead to compulsive use or subvert or impair user autonomy.”² While most of the Proposed Rule responds to this directive, a number of sections go beyond this scope. While the AGO has authority to promulgate rules on these other topics, many are already adequately covered by the statutory text itself. Expanding on these through the Proposed Rule threatens to have undesirable effects and even to conflict with the statute. As a result, EPIC recommends simplifying the Rule to remove some of these sections and focus on the harmful data-processing and design practices that the AADC explicitly relies on the AGO for rulemaking on.

A. Amend the “Applicability” section to conform with statutory definitions.

As a preliminary matter, EPIC recommends that the AGO strike part (b) of the Applicability section of the Proposed Rule to prevent inconsistent definitions. As currently

² Sec. 1. 9 V.S.A. chapter 62, subchapter 6 §2449f(b).

drafted, part (a) of the Applicability section correctly and appropriately identifies that the Rule applies to covered businesses insofar as their products are used by a covered minor. However, part (b) creates unhelpful confusion by adding that the Rule’s requirements and provisions apply “where a covered business knows or has reason to know that a user is a covered minor” and then defining such knowledge in a circular way.

The AADC already includes a knowledge requirement of its own. The statute limits its definition of “covered business” to those whose “online products, services, or features are reasonably likely to be accessed to a covered minor,” and in turn defines a “covered minor” as a consumer who “a covered business actually knows is a minor or labels as a minor pursuant to [the age assurance rulemaking the AGO has undertaken pursuant to Section 2449g].” The Proposed Rule’s articulation of a separate—if superficially similar—standard of applying where a covered business “knows or has reason to know that a user is a covered minor” creates needless confusion as to what role this latter test plays. For simplicity and clarity, the AGO should rely on the knowledge standards already included in the AADC’s text.

Furthermore, the Proposed Rule’s articulation of when this “knows or has reason to know” standard is satisfied creates further issues. The Proposed Rule states that a covered business “shall be deemed to have reason to know that a user is a covered minor” whenever “The online service, product, or feature is reasonably likely to be accessed by a covered minor.” But reasonable likelihood of access by a covered minor is, itself, a prerequisite for a company to be considered a covered business in the first place, making this definition circular. Under the Proposed Rule’s definition, a covered business *inherently* knows or has reason to know that a user is a covered minor. This does not make sense and seems to conflict with Section

2449a(12)’s requirement that a covered minor is only one that the company *actually* knows or has *labeled* as a minor.

For these reasons, EPIC recommends that the AGO strike part (b) from the Applicability section of the Proposed Rule entirely. Part (a), accompanied by the statutory definitions of covered business and covered minor, already adequately defines the scope of the AGO’s regulations, and should be allowed to stand alone.

B. The AGO should remove a number of sections that do not address prohibited processing and design practices.

Several sections of the Proposed Rule (specifically those not addressing prohibited data-processing and design practices) either restate statutory text in ways that risk confusion or actually conflict with the statute. In some cases, we fear provisions of the Proposed Rule, by broadening the statutory language, could also unintentionally limit useful functions of covered business’s products. As a result, EPIC recommends the following sections of the Proposed Rule be removed:

Remove the General Duty Section. The General Duty section essentially restates the duty of care already provided in Section 2449c of the statute. However, the duty asserted in the Proposed Rule uses the term “heightened risk of harm” rather than the categories used in the statute (emotional harm, compulsive use, and discrimination). To prevent two similar but distinct duties of care, EPIC recommends removing this general duty from the Proposed Rule.

Remove the Foreseeability Section. Accordingly, EPIC also recommends removing the section on foreseeability. While the minimum duty of care in Section 2449c of the statute hinges on whether the harms are “reasonably foreseeable,” this is a concept well-defined in law and that

courts are well-positioned to adjudicate. EPIC fears that the Proposed Rule’s discussion of foreseeability threatens to complicate, rather than simplify, this analysis.

Remove the Data Minimization Section. Similar to the general duty section, the Proposed Rule’s data minimization provisions largely repeat the statutory language but with some inconsistencies, for instance adding a prohibition on the “use” of data. We also have concerns that in certain contexts, some of the prohibitions added by this section could reduce benign and even useful functionality in unintended ways. EPIC also has serious concerns with the definition of “necessary to provide a service,” which seems to conflict with the statute itself and is missing important provisions (such as a carveout for complying with legal obligations). We would recommend avoiding defining this term, or relying on definitions from other data minimization statutes.

Remove the Secondary Use Section. In the same vein, the secondary use section of the Proposed Rule again do not perfectly align with the statute, missing, for instance, the exception for secondary uses to comply with the AADC itself. Furthermore, some of the more specific prohibitions the Proposed Rule adds could create issues in certain contexts, such as for chatbots, for which a ban on inferring any preferences without exception would presumably limit considerable functionality. For these reasons, we recommend the AGO leave the statutory text itself to govern.

Remove the Monitoring and Tracking Section. Section 2449f(a) of the statute requires a conspicuous signal be provided to a minor whenever an individual is monitoring/tracking the online activity or location of the covered minor. However, the Proposed Rule seems to broaden this signaling requirement to any time even the covered business itself is internally tracking the user’s behavior. This could create a situation where it is harder for a covered minor to tell when

an individual is actually tracking their activity, if the tracking signal is constantly present due to the platform's own tracking activity.

Remove the Personalized Media Section. This section of the Proposed Rule largely rephrases the provisions of Section 2449(f)(a)(4), and as a result seem duplicative and present an unnecessary risk of inconsistency. Indeed, some of the definitions provided in the Proposed Rule seem to undercut the statute's exceptions and limit benign functionality. The requirement that an "express and unambiguous request" be specific and contemporaneous, for instance, would seem to exclude lists of accounts a user follows, or prior requests to see more or less content of a certain type. What's more, many types of feed personalization are beneficial.³ For this reason, feed personalization should not be categorically prohibited. Indeed, the statutory text allows personalization when based on signals expressly provided by a covered minor. EPIC thus suggests removing this section from the Rule and relying instead on the plain statutory language.

Remove the Sections Discussing Compulsive Use and Impairment of Autonomy. Finally, EPIC suggests removing the provisions on "Compulsive Use" and "Impairment of Autonomy." As drafted, these sections seem inconsistent with the standard set by the statute. For instance, while the statute defines "compulsive use" as repetitive use that "materially disrupts" a major life activity such as sleeping, eating, or learning, the Proposed Rule deems a practice as causing compulsive use if it meets any of four conditions, including being "reasonably likely to increase" usage. This turns a harm standard into an engagement standard. Given that the Proposed Rule already separately identifies specific data-processing and design practices that are prohibited for causing these harms, these two additional sections articulating "compulsive use" and

³ Alissa Cooper, et al., *Better Feeds: Algorithms That Put People First*, Knight Georgetown Institute (March 2025), https://kgi.georgetown.edu/wp-content/uploads/2025/02/Better-Feeds_-_Algorithms-That-Put-People-First.pdf.

“impairment of autonomy” more generally can be removed without undermining the Rule’s efficacy. Doing so would simplify the Rule and prevent confusion.

In addition to removing the above sections themselves, EPIC recommends that the AGO remove definitions in the Proposed Rule made necessary by these sections. In particular, we have concerns about the definitions of “Select, recommend, or prioritize media,” “Necessary to provide a service,” and “Express and unambiguous request,” which we fear are likely to cause confusion and statutory conflict.

A version of the Proposed Rule that eliminates these redundant or conflicting provisions, and focuses instead on prohibited data-processing and design practices, will be simpler to follow, better placed to withstand legal challenge, and more effective at protecting Vermont’s youth.

II. The AGO should modify its description of certain prohibited practices for clarity.

The AGO’s Proposed Rule identifies nine practices as prohibited for minors in accordance with Section 2449f(b) of the AADC. EPIC agrees with the AGO’s determination that these practices lead to compulsive use or impair user autonomy and should be prohibited for minors. However, EPIC proposes the following revisions to more precisely define these practices and to avoid repetition. These changes do not significantly change the substance of the Proposed Rule, but rather serve to ensure that the prohibited practices are clearly and appropriately scoped, making it easier for covered businesses to comply and reducing the risk of litigation.

A. The AGO should expand the “Asymmetrical Interfaces” prohibition.

As currently drafted, the Proposed Rule only prohibits asymmetrical interfaces when they are designed to extend use. EPIC recommends expanding the definition to also prohibit asymmetrical interfaces that discourage covered minors from choosing more protective settings

more broadly. This broader definition is more in line with Section 2449f(b)'s directive to prohibit practices that "impair user autonomy," not just those that lead to compulsive use, and would prevent platforms from manipulating minors into turning off privacy protections.

Proposed Revisions:

*(a) A covered business shall not design interfaces that make continued **engagement use, or a less protective setting**, substantially easier **for a covered minor to choose** than disengagement, exit, or reduction of use, **or a more protective setting by a covered minor**.*

(b) Illustrative examples include, but are not limited to:

- 1. Hidden, obscured, or less accessible logout, ~~or~~ exit, **and privacy setting controls**;*
- 2. Requiring additional steps, effort, or time to exit, disable features, or reduce use compared to continuing ~~engagement use~~; ~~or~~*
- 3. Interfaces that delay, discourage, or interfere with a covered minor's ability to disengage from the online service, product, or feature; **or***
- 4. **Interfaces that make less protective settings more prominent than more protective settings**.*

In line with this, EPIC also recommends the AGO define "Less protective setting" as "a setting that decreases a user's privacy or safety protections, including but not limited to increasing the amount of personal data a covered business collects or processes about the user, decreasing the user's privacy with respect to other users, or increasing the risk of causing compulsive use."

B. The AGO should clarify the "Autoplay" prohibition.

Though somewhat intuitive, "autoplay" design practices can be hard to precisely define with sufficient specificity to avoid vagueness concerns. EPIC suggests building off the definition of autoplay used in the recent Meta settlement and suggest the following language accordingly.

Proposed Revisions:

(a) A covered business shall not automatically initiate **or resume playback of media** without **an affirmative and unambiguous** action by a covered minor.

(b) Illustrative examples include, but are not limited to:

1. Automatic playback of videos **upon opening an online product, service, or feature**; or
2. ~~Auto-advancing media~~ **Automatic playback when a video becomes visible on a screen or when a covered minor hovers over a video.**

C. The AGO should merge the prohibitions on “Behavioral Recommendation Systems,” “Engagement-Based Notifications,” and “Reinforcement Mechanisms” into a single prohibition on usage maximization systems.

The Proposed Rule currently contains separate prohibitions on engagement-optimizing “Behavioral Recommendation Systems,” which use personal/behavioral data and inferences to prioritize content, on “Engagement-Based Notifications,” which target notifications to maximize minors’ engagement, and on “Reinforcement Mechanisms” that use variable/intermittent rewards to drive engagement from minors. All of these are examples of the broader design practice of engagement-maximization, or more accurately “usage-maximization.” For simplicity, EPIC recommends merging these sections into a single prohibition on “Usage Maximization Systems,” and providing usage-maximizing feeds, engagement-based notifications, and reinforcement mechanisms as illustrative examples. This change would streamline the rules while more directly addressing the underlying harm of these practices—that they manipulate minors into overuse.

Proposed Revisions:

(a) A covered business shall not ~~implement or deploy any system that uses~~ **a covered minor’s personal data, behavioral data, behavioral inferences, or inferred preferences to select, recommend, rank, order, prioritize, or sequence media for a covered minor extend, increase, optimize, or maximize user engagement, session time, or frequency of use.**

(b) ~~Such systems rely on engagement optimization and operate without express and unambiguous request by a covered minor.~~ **A covered business shall not use variable**

reward schedules on a covered minor, regardless of whether such features use data about the minor.

(c) Illustrative examples include, but are not limited to:

1. Algorithmic ~~feeds~~ **recommendation systems** that **use usage maximization techniques to select,** prioritize, ~~rank,~~ or recommend media ~~based on a covered minor's behavioral data, inferred preferences, or prior activity;~~
2. ~~"For You" feeds~~ **Using a variable reward schedule to distribute rewards or other incentives to a covered minor;** ~~or~~
3. ~~Engagement-ranked media~~ **A chatbot that uses a covered minor's interactions with the chatbot to manipulate the covered minor into extending their session or initiating a new session; or**
4. **Using usage maximization techniques to determine the timing, frequency, or batching of push notifications for a covered minor.**

In line with this, EPIC also recommends amending the definition of "engagement optimization" to "usage maximization", and clarifying that it means "techniques used to **increase optimize** a covered minor's **interaction-engagement with an online service, product, or feature**, session duration, or frequency **of use.**"

D. The AGO should clarify some of the illustrative examples in the "Circumvention" prohibition.

EPIC recommends making the third illustrative example more concrete, to provide a clearer demonstration of what sort of conduct constitutes circumvention. As originally drafted, the third illustrative example largely echoed the language of the rule itself. Instead, we suggest moving the circumvention provision from the "Push Notification" section of the Proposed Rule into an illustrative example here, placing all of the circumvention prohibitions in one place and providing a clearer example of prohibited activity.

Proposed Revisions:

(a) A covered business shall not design, implement, modify, or deploy a feature, interface, or practice that:

1. Achieves substantially similar effects as a prohibited practice through alternative design, technical, or operational means; or

2. Circumvents or attempts to circumvent the intent, purpose, or requirements of this Rule.

(b) In determining whether a practice constitutes circumvention, the Attorney General may consider whether the practice:

1. Replicates or replaces engagement optimization effects through alternative mechanisms or design features;
2. Produces substantially similar effects on a covered minor's engagement, behavior, or decision-making as a prohibited practice;
3. Uses alternative signals, metrics, or behavioral indicators to achieve outcomes otherwise prohibited by this Rule; or
4. Replaces a prohibited feature with a substantially equivalent feature designed to achieve similar engagement outcomes.

(c) Illustrative examples include, but are not limited to:

1. Redesigning a prohibited feature while preserving substantially similar engagement effects;
2. Using alternative ~~behavioral~~user signals or ~~inferred preferences~~inferences to optimize engagement;
3. ~~Replacing prohibited notifications, prompts, or recommendation features with substantially equivalent engagement mechanisms~~ Substituting notifications with functionally equivalent prompts, alerts, or messages delivered through other means; or
4. Modifying the presentation, timing, or delivery of a prohibited practice while maintaining substantially similar behavioral effects.

E. The AGO should more precisely define “Continuous Media Feeds” to prevent ambiguity.

EPIC recommends changing the definition of “Continuous Media Feeds” to more precisely target the sort of “infinite scroll” features that lead to compulsive use. We believe this revised language is better placed to withstand a vagueness challenge from industry.

Proposed Revisions:

(a) A covered business shall not ~~provide media streams that automatically load or~~ continuously ~~present~~additional new media to an algorithmic feed seamlessly and without requiring ~~an~~ a ~~discrete and intentional~~ action by a covered minor to request such additional media, beyond ~~ordinary~~ scrolling or ~~navigation~~ swiping, ~~to access such additional media~~.

(b) Illustrative examples include, but are not limited to:

1. Infinite scroll interfaces;
2. Interfaces that automatically and continuously load additional media indefinitely as a covered minor scrolls, swipes, or otherwise ~~engages in ordinary navigation~~ navigates across a page; or
3. Continuously ~~presented~~ loading media ~~streams without features that lack a clear stopping point or a wherein a covered minor is required to take an affirmative action to request discrete and intentional action by a covered minor, beyond ordinary scrolling or navigation, to access~~ additional media.

F. The AGO should strengthen the “Push Notification” restrictions in line with the recent Meta Settlement.

Parts of the Proposed Rule’s push notification restrictions, specifically sections (a), (b), (c), and (f), are most naturally covered by other sections of the Rule, specifically by the prohibitions on usage maximization systems, social pressure functions, and circumvention. As a result, to avoid duplication, EPIC suggests focusing this section instead on just three things: (1) limiting notifications to minors during nighttime; (2) limiting notifications to minors during school hours; and (3) ensuring minors have control over what types of notifications to receive at all other times.

Prohibiting Nighttime Notifications. The Proposed Rule already would prohibit nighttime notifications to minors between midnight and 6 a.m. EPIC suggests broadening this nighttime notification ban to 10 p.m. to 7 a.m. This is consistent with the nighttime notification ban included in the recent Meta Settlement, and would provide covered minors with a greater period of uninterrupted sleep.

Prohibiting School-Hour Notifications. In addition to nighttime notifications, the AGO should also prohibit notifications during school hours. This, too, was included in the Meta Settlement, which prohibits push notifications from 8 a.m. to 3 p.m. from August 15 through June 15 each year. The AGO should adopt a similar restriction calibrated to the dates of the

typical Vermont school year. Preventing notifications during school hours is vital for reducing distraction in schools and for discouraging minors from circumventing school phone bans.

Securing Control Over Notification Categories. Equally important, EPIC also recommends that the AGO revise the Proposed Rule to prohibit covered businesses from providing a single setting to turn all push notifications on during times in which such notifications are allowed. Section 2449d(a)(H) requires covered businesses to turn push notifications off for minors by default. However, it is likely that minors will opt to receive certain push notifications, such as notifications alerting them of a new direct message. It is important that, in doing so, minors be given control over what types of notifications they wish to receive, and which they would rather leave off, and that businesses not be allowed to force minors into a false “all-or-nothing” choice. A requirement that covered businesses that offer multiple categories of push notifications give minors control over each category, and not provide a single option to turn all notifications on, would give minor users more autonomy over their online experience and reduce the number of notifications received.

Prohibiting these three practices would bring the AGO’s rule in line with the Meta Settlement, prevent the most harmful effects of push notifications for minors, and prevent this section of the Rule from duplicating the provisions already covered elsewhere.

Proposed Redraft:

~~**(a) A covered business shall not send push notifications to a covered minor designed or reasonably likely to encourage repeated, prolonged, or compulsive engagement.**~~

~~**(b) Prohibited notifications include any notification that:**~~

- ~~**1. Is based on personal data, activity, or behavioral data;**~~
- ~~**2. Is triggered by predicted or inferred preferences, interests, or likelihood of engagement; or**~~
- ~~**3. Encourages a covered minor to return to, continue using, or increase use of an online service, product, or feature through the use of personal data, behavioral data, or inferred preferences.**~~

~~(c) A covered business shall not:~~

- ~~1. Use a covered minor's personal data to determine the timing, frequency, or media of notifications for purposes of increasing engagement; or~~
- ~~2. Use a covered minor's behavioral data or inferred preferences to trigger or optimize notifications.~~

~~(d) (a) A covered business shall not send any push notification to a covered minor between the hours of 12:00 a.m.-10:00 p.m. and 6:00 a.m.-7:00 a.m., except where necessary to provide a transactional, safety, or account-related notification requested by a covered minor.~~

~~(e) (b) A covered business shall not send any push notification to a covered minor between the hours of 8:00 a.m. and 3:00 p.m. on Monday through Friday each week between Labor Day and June 20 [NOTE: EPIC recommends calibrating these dates to the typical Vermont school schedule]. This section shall not prohibit:~~

- ~~1. Notifications that are necessary to provide an online service, product, or feature in direct response to an express and unambiguous request by a covered minor;~~
- ~~2. Notifications that provide transactional, safety, or account-related information and are not designed to increase engagement; or~~
- ~~3. Notifications expressly requested by a covered minor.~~

~~(f) (c) A covered business that provides multiple categories of push notifications through an online product, service, or feature, such as notifications concerning direct messages, peer activity, software updates, and offers, shall provide consumers with settings to enable or disable each specific category of push notification offered by the covered business on the online product, service, or feature, and shall not provide a single setting that turns all categories of push notifications on. A covered business shall not circumvent this section by:~~

- ~~1. Modifying the format, timing, or delivery mechanism of a notification to achieve substantially similar engagement effects; or~~
- ~~2. Substituting notifications with functionally equivalent prompts, alerts, or messages delivered through other means.~~

~~(g) Examples of prohibited push notifications include, but are not limited to:~~

- ~~1. Notifications encouraging a covered minor to return to a service based on prior activity;~~
- ~~2. Alerts highlighting new or recommended media likely to increase engagement;~~
- ~~3. Reminders or prompts designed or reasonably likely to encourage continued use or repeated access;~~
- ~~4. Notifications triggered by a prediction that a covered minor is likely to re-engage.~~

G. The AGO should make minor clarifying edits to the “Social Pressure Features” prohibition.

EPIC recommends some small tweaks to the prohibition on “Social Pressure Features” to clarify the scope of the prohibition.

Proposed Revisions:

(a) A covered business shall not implement features designed to create social pressure, urgency, or perceived obligation for a covered minor to engage with or otherwise use an online service, product, or feature.

(b) Illustrative examples include, but are not limited to:

- 1. Streaks or other features that reward continuous or repeated engagement or use;*
- 2. Missed activity alerts, inactivity notices, or reminders to access an online service, product, or feature, designed or reasonably likely to encourage a covered minor to return to the online service, product, or feature;*
- 3. Peer activity ~~prompts~~ alerts, including notifications that friends, peers, or contacts are active, engaging, or waiting;*
- 4. Popularity indicators, engagement counts, or social comparison features designed or reasonably likely to ~~encourage continued engagement~~ increase engagement, usage, session length, or frequency of use; or*
- 5. Features that create a perceived social consequence for disengaging, delaying response, or failing to maintain ~~activity~~ consistent use.*

H. The AGO should remove the duplicative “Illustrative Applications” section at the end of the Proposed Rule.

The Proposed Rule currently includes illustrative examples for each of the prohibited design practices, as well as a standalone “Illustrative Applications” section at the end of the Proposed Rule listing three “examples of practices that may violate multiple provisions” of the Rule. EPIC believes that, given the examples provided throughout the Proposed Rule, that these three final illustrations are duplicative and would recommend they be removed for simplicity and concision.

We are grateful to the Attorney General for continuing to lead on keeping kids safe online, and thank you for considering our recommendations. Please contact the Director of EPIC's Platform Governance and Accountability program, Megan Iorio, at iorio@epic.org with any questions.

Sincerely,

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